

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DEREK CARROCA )  
Plaintiff, )  
v. )  
ALLSTAR ENTERPRISES AND )  
COLLISION CENTER, INC. and )  
ROBERT CUCURULL )  
Defendants. )  
Civil Action No. 12-11202-DJC

## **VERIFIED MOTION FOR ATTORNEY'S FEES**

NOW COMES the plaintiff, by and through counsel, pursuant to the Court's December 7, 2012 ordering him to file a verified motion for attorney's fees arising out the defendant's failure to make discovery or to respond to the plaintiff's request for a discovery conference.

## I. BACKGROUND

1. This is an unpaid overtime case arising under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* and other laws.
2. The plaintiff served the defendant, Robert Cucurull, with a first set of interrogatories on October 5, 2012.
3. The defendant failed to serve any answers to the interrogatories and defendants' counsel failed to respond to the plaintiff's telephone message left with his secretary or to his email message requesting a Rule 37 discovery conference.

4. The plaintiff filed his motion to compel discovery on November 21, 2012 and defendants' counsel received notice of the same via his registered ECF email address: [don@scpclaw.com](mailto:don@scpclaw.com).
5. The defendant did not object or otherwise respond to the plaintiff's motion to compel discovery.
6. The Court issued an order compelling the defendant to respond to the plaintiff's interrogatories and granting the plaintiff until December 17, 2012 to file this motion.
7. On December 14, 2012, the defendant finally responded to the plaintiff's interrogatories.

## II. BASIS OF FEE

1. I am an attorney in good standing licensed to practice in the Commonwealth of Massachusetts and before this Court. I represent the plaintiff in this action.
2. My contemporaneous billing records arising out of the defendants' failure to make discovery follow. They are a true and accurate record of the work done in connection with this matter.

Date	Description	Duration	Total
11/12/2012	Drafting and emailing FRCP 37 request for conference to defendant's counsel re lack of responses to interrogatories.	.3	\$90
11/13/2012	Contacting defendant's counsel re failure to make discovery-left phone	.2	\$60

	message and sent email.		
11/20/2012	Drafting motion to compel discovery	1.3	\$390
11/21/2012	Editing and filing motion to compel discovery	.4	\$120
12/15/2012	Drafting and editing verified motion for attorneys' fees	1.6	\$480
<b>TOTAL</b>			<b>\$1,140</b>

3. My normal hourly rate is \$300 per hour. On information and belief, this is an hourly rate consistent with the hourly rate charged by attorneys in similar cases in Boston with similar experience and expertise.
4. I received my undergraduate degree from Vanderbilt University and law degree from the Boston University School of Law.
5. I have been admitted to practice in Massachusetts since December 17, 2002. My practice focuses on employment law, consumer protection litigation, and bankruptcy.
6. For at least the past year, clients who retain me on an hourly basis have compensated me at hourly rate of \$300.

### III. SUPPLEMENTATION REQUEST

In the event that the defendant opposes this motion necessitating a hearing on the matter, the plaintiff requests that he be allowed to supplement this request for fees in open court to account for time traveling to and attending the hearing on this motion.

WHEREORE, the plaintiff requests that the Court award him \$1,140 in attorney's fees arising out of the defendant's failure to make discovery. The plaintiff also requests that the Court order to make this payment 10 days after the Court's order on this motion by check or money order payable to Nicholas F. Ortiz.

**VERIFICATION**

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 15TH  
DAY OF DECEMBER, 2012.

DEREK CARROCA,  
by his attorney,

*/s/ Nicholas F. Ortiz*

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Nicholas F. Ortiz, BBO# 655135  
306 Dartmouth Street  
Suite 501  
Boston, MA 02116  
(617) 716-0282

Dated: December 15, 2012

**CERTIFICATE OF SERVICE**

I, Nicholas F. Ortiz, hereby certify that today I caused to be served the within on counsel for the defendants by ECF servicing.

*/s/ Nicholas F. Ortiz*

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Nicholas F. Ortiz